Supreme Court, U.S.
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No. 97-969 (3)

In The

Supreme Court of the United States

October Term, 1997

DAVID KEANU SAI, Regent and Ambassador of
the Hawaiian Kingdom, *pro tempore*,
Petitioner,
v.

WILLIAM JEFFERSON CLINTON, President of
the United States of America,
Respondent.

On Petition for Writ of Mandamus

APPENDIX TO FIRST AMENDED PETITION FOR WRIT OF MANDAMUS

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APPENDIX I

MESSAGE

To the Senate and House of Representatives:

In my recent annual message to the Congress I briefly referred to our relation with Hawaii and expressed the intention of transmitting further information on the subject when additional advises permitted.

Though I am not able now to report a definite change in the actual situation, I am convinced that the difficulties lately created both here and in Hawaii and now standing in the way of a solution through Executive action of the problem presented, render it proper, and expedient, that the matter should be referred to the broader authority and discretion of Congress, with a full explanation of the endeavor thus far made to deal with the emergency and a statement of the considerations which have governed my action.

I suppose that right and justice should determine the path to be followed in treating this subject. If national honesty is to be disregarded and a desire for territorial extension, or dissatisfaction with a form of government not our own, ought to regulate our conduct, I have entirely misapprehended the mission and character of our Government and the behavior which the conscience of our people demands of their public servants.

When the present Administration entered upon its duties the Senate had under consideration a treaty providing for the annexation of the Hawaiian Islands to the territory of the United States. Surely under our Constitution and laws the enlargement of our limits is a manifestation of the highest attribute of sovereignty, and if entered upon as an Executive act, all things relating to the transaction should be clear and free from suspicion. Additional importance attached to this particular treaty of annexation, because it contemplated a departure from unbroken

American tradition in providing for the addition to our territory of islands of the sea more than two thousand ~~miles~~ removed from our nearest coast.

These considerations might not of themselves call for interference with the completion of a treaty entered upon by a previous Administration. But it appeared from the documents accompanying the treaty when submitted to the Senate, that the ownership of Hawaii was tendered to us by a provisional government set up to succeed the constitutional ruler of the islands, who had been dethroned, and it did not appear that such provisional government had the sanction of either popular revolution or suffrage. Two other remarkable features of the transaction naturally attracted attention. One was the extraordinary haste-not to say precipitancy-characterizing all the transactions connected with the treaty. It appeared that a so-called Committee of Safety, ostensibly the source of the revolt against the constitutional Government of Hawaii, was organized on Saturday, the 14th day of January; that on Monday, the 16th, the United States forces were landed at Honolulu from a naval vessel lying in its harbor; that on the 17th the scheme of a provisional government was perfected, and a proclamation naming its officers was on the same day prepared and read at the Government building; that immediately thereupon the United States Minister recognized the provisional government thus created; that two days afterwards, on the 19th day of January, commissioners representing such government sailed for this country in a steamer especially chartered for the occasion, arriving in San Francisco on the 28th day of January, and in Washington on the 3d day of February; that on the next day they had their first interview with the Secretary of State, and another on the 11th, when the treaty of annexation was practically agreed upon, and that on the 14th it was formally concluded and on the 15th transmitted to the Senate. Thus between the initiation of the scheme for a provisional government

in Hawaii on the 14th day of January and the submission to the Senate of the interval was thirty-two days, fifteen of which were spent by the Hawaiian Commissioners in their journey to Washington.

In the next place, upon the face of the papers submitted with the treaty, it clearly appeared that there was open and undetermined an issue of fact of the most vital importance. The message of the President accompanying the treaty declared that "the overthrow of the monarchy was not in any way promoted by this Government," and in a letter to the President from the Secretary of State, also submitted to the Senate with the treaty, the following passage occurs: "At the time the provisional government took possession of the Government buildings no troops or officers of the United States were present or took any part whatever in the proceedings. No public recognition was accorded to the provisional government by the United States Minister until after the Queen's abdication and when they were in effective possession of the Government buildings, the archives, the treasury, the barracks, the police station, and all the potential machinery of the Government." But a protest also accompanied said treaty, signed by the Queen and her ministers at the time she made way for the provisional government, which explicitly stated that she yielded to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support such provisional government.

The truth or falsity of this protest was surely of the first importance. If true, nothing but the concealment of its truth could induce our Government to negotiate with the semblance of a government thus created, nor could a treaty resulting from the acts stated in the protest have been knowingly deemed worthy of consideration by the Senate. Yet the truth or falsity of the protest had not been investigated.

I conceived it to be my duty therefore to withdraw the treaty from the Senate for examination, and meanwhile to cause an accurate, full, and impartial investigation to be made of the facts attending the subversion of the constitutional Government of Hawaii, and the installment in its place of the provisional government. I selected for the work of investigation the Hon. James H. Blount, of Georgia, whose service of eighteen years as a member of the House of Representatives, and whose experience as chairman of the Committee of Foreign Affairs in that body, and his consequent familiarity with international topics, joined with his character and honorable reputation, seemed to render him peculiarly fitted for the duties entrusted to him. His report detailing his action under the instructions given to him and the conclusions derived from his investigation accompany this message.

These conclusions do not rest for their acceptance entirely upon Mr. Blount's honesty and ability as a man, nor upon his acumen and impartiality as an investigator. They are accompanied by the evidence upon which they are based, which evidence is also herewith transmitted, and from which it seems to me no other deductions could possibly be reached than those arrived at by the Commissioner.

The report with its accompanying proofs, and such other evidence as is now before the Congress or is herewith submitted, justifies in my opinion the statement that when the President was led to submit the treaty to the Senate with the declaration that "the overthrow of the monarchy was not in any way promoted by this Government", and when the Senate was induced to receive and discuss it on that basis, both President and Senate were misled.

The attempt will not be made in this communication to touch upon all the facts which throw light upon the progress and consummation of this scheme of annexation. A very brief and imperfect

reference to the facts and evidence at hand will exhibit its character and the incidents in which it had its birth.

It is unnecessary to set forth the reasons which in January, 1893, led a considerable proportion of American and other foreign merchants and traders residing at Honolulu to favor the annexation of Hawaii to the United States. It is sufficient to note the fact and to observe that the project was one which was zealously promoted by the Minister representing the United States in that country. He evidently had an ardent desire that it should become a fact accomplished by his agency and during his ministry, and was not inconveniently scrupulous as to the means employed to that end. On the 19th day of November, 1892, nearly two months before the first overt act tending towards the subversion of the Hawaiian Government and the attempted transfer of Hawaiian territory to the United States, he addressed a long letter to the Secretary of State in which the case for annexation was elaborately argued, on moral, political, and economical grounds. He refers to the loss to the Hawaiian sugar interests from the operation of the McKinley bill, and the tendency to still further depreciation of sugar property unless some positive measure of relief is granted. He strongly inveighs against the existing Hawaiian Government and emphatically declares for annexation. He says: "In truth the monarchy here is an absurd anachronism. It has nothing on which it logically or legitimately stands. The feudal basis on which it once stood no longer existing, the monarchy now is only an impediment to good government-an obstruction to the prosperity and progress of the islands."

He further says: "As a crown colony of Great Britain or a Territory of the United States the government modifications could be made readily and good administration of the law secured. Destiny and the vast future interests of the United States in the Pacific clearly indicate who at no distant

day must be responsible for the government of these islands. Under a territorial government they could be as easily governed as any of the existing Territories of the United States." * * * "Hawaii has reached the parting of the ways. She must now take the road which leads to Asia, or the other which outlets her in America, gives her an American civilization, and binds her to the care of American destiny." He also declares: "One of two courses seems to me absolutely necessary to be followed, either bold and vigorous measures for annexation or a 'customs union,' an ocean cable from the California coast to Honolulu, Pearl Harbor perpetually ceded to the United States, with an implied but not expressly stipulated American protectorate over the islands. I believe the former to be the better, that which will prove much the more advantageous to the islands, and the cheapest and least embarrassing in the end to the United States. If it was wise for the United States through Secretary Marcy thirty-eight years ago to offer to expend $100,000 to secure a treaty of annexation, it certainly can not be chimerical or unwise to expend $100,000 to secure annexation in the near future. Today the United States has five times the wealth she possessed in 1854, and the reasons now existing for annexation are much stronger than they were then. I can not refrain from expressing the opinion with emphasis that the golden hour is near at hand."

These declarations certainly show a disposition and condition of mind, which may be usefully recalled when interpreting the significance of the Minister's conceded acts or when considering the probabilities of such conduct on his part as may not be admitted.

In this view it seems proper to also quote from a letter written by the Minister to the Secretary of State on the 8th day of March, 1892, nearly a year prior to the first step taken toward annexation. After stating the possibility that the existing Government of Hawaii might be over turned

by an orderly and peaceful revolution, Minister Stevens writes as follows: "Ordinarily in like circumstances, the rule seems to be to limit the landing and movement of United States forces in foreign waters and dominion exclusively to the protection of the United States legation and of the lives and property of American citizens. But as the relations of the United States to Hawaii are exceptional, and in former years the United States officials here took somewhat exceptional action in circumstances of disorder, I desire to know how far the present Minister and naval commander may deviate from established international rules and precedent in the contingencies indicated in the first part of this dispatch."

To a minister of this temper full of zeal for annexation there seemed to arise in January, 1893, the precise opportunity for which he was watchfully waiting-an opportunity which by timely "deviation from established international rules and precedents" might be improved to successfully accomplish the great object in view; and we are quite prepared for the exultant enthusiasm with which in a letter to the State Department dated February 1, 1893, he declares: "The Hawaiian pear is now fully ripe and this is the golden hour for the United States to pluck it."

As a further illustration of the activity of this diplomatic representative, attention is called to the fact that on the day the above letter was written apparently unable longer to restrain his ardor, he issued a proclamation whereby "in the name of the United States" he assumed the protection of the Hawaiian Islands and declared that said action was "taken pending and subject to negotiations at Washington." Of course this assumption of a protectorate was promptly disavowed by our Government, but the American flag remained over the Government building at Honolulu and the forces remained on guard until April, and after Mr. Blount's arrival on the scene, when both were removed.

A brief statement of the occurrences that led to the subversion of the constitutional Government of Hawaii in the interest of annexation to the United States will exhibit the true complexion of that transaction.

On Saturday, January 14, 1893, the Queen of Hawaii, who had been contemplating the proclamation of a new constitution, had, in deference to the wishes and remonstrances of her cabinet, renounced the project for the present at least. Taking this relinquished purpose as a basis of action, citizens of Honolulu numbering from fifty to one hundred, mostly resident aliens, met in a private office and selected a so-called Committee of Safety, composed of thirteen persons, seven of whom were foreign subjects, and consisted of five Americans, one Englishman, and one German. This committee, though its designs were not revealed, had in view nothing less than annexation to the United States, and between Saturday, the 14th, and the following Monday, the 16th of January-though exactly what action was taken may not be clearly disclosed-they were certainly in communication with the United States Minister. On Monday morning the Queen and her cabinet made a public proclamation, with a notice which was specially served upon the representatives of all foreign governments, that any changes in the constitution would be sought only in the methods provided by that instrument. Nevertheless, at the call and under the auspices of the Committee of Safety, a mass meeting of citizens was held on that day to protest against the Queen's alleged illegal and unlawful proceedings and purposes. Even at this meeting the Committee of Safety continued to disguise their real purpose and contented themselves with procuring the passage of a resolution denouncing the Queen and empowering the committee to devise ways and means "to secure the permanent maintenance of law and order and the protection of life, liberty, and property in Hawaii." This meeting adjourned between three and four o'clock in

the afternoon. On the same day, and immediately after such adjournment, the committee, unwilling to take further steps without the cooperation of the United States Minister, addressed him a note representing that the public safety was menaced and that lives and property were in danger, and concluded as follows: "We are unable to protect ourselves without aid, and therefore pray for the protection of the United States forces." Whatever may be thought of the other contents of this note, the absolute truth of this latter statement is incontestable. When the note was written and delivered, the committee, so far as it appears, had neither a man nor a gun at their command, and after its delivery they became so panic-stricken at their position that they sent some of their number to interview the Minister and request him not to land the United States forces till the next morning. But he replied that the troops had been ordered, and whether the committee were ready or not the landing should take place. And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer *Boston*, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the *bona fide* purpose of protecting the imperilled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the *de facto* and the *de jure* government. In point of fact the existing government instead of requesting the presence of an armed force protested against it. There is as little basis for the pretense that

such forces were landed for the security of American life and property. If so, they would have been stationed in the vicinity of such property and so as to protect it, instead of at a distance and so as to command the Hawaiian Government building and palace. Admiral Skerrett, the officer in command of our naval force on the Pacific station, has frankly stated that in his opinion the location of the troops was inadvisable if they were landed for the protection of American citizens whose residences and places of business, as well as the legation and consulate, were in a distant part of the city, but the location selected was a wise one if the forces were landed for the purpose of supporting the provisional government. If any peril to life and property calling for any such martial array had existed, Great Britain and other foreign powers interested would not have been behind the United States in activity to protect their citizens. But they made no sign in that direction. When these armed men were landed, the city of Honolulu was in its customary orderly and peaceful condition. There was no symptom of riot or disturbance in any quarter. Men, women, and children were about the streets as usual, and nothing varied the ordinary routine or disturbed the ordinary tranquillity, except the landing of the *Boston's* marines and their march through the town to the quarters assigned them. Indeed, the fact that after having called for the landing of the United States forces on the plea of danger to life and property the Committee of Safety themselves requested the Minister to postpone action, exposed the untruthfulness of their representations of present peril to life and property. The peril they saw was an anticipation growing out of guilty intentions on their part and something which, though not then existing, they knew would certainly follow their attempt to overthrow the Government of the Queen without the aid of the United States forces.

Thus it appears that Hawaii was taken pos-

session of by the United States forces without the consent or wish of the government of the islands, or of anybody else so far as shown, except the United States Minister.

Therefore the military occupation of Honolulu by the United States on the day mentioned was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property. It must be accounted for in some other way and on some other ground, and its real motive and purpose are neither obscure nor far to seek.

The United States forces being now on the scene and favorably stationed, the committee proceeded to carry out their original scheme. They met the next morning, Tuesday, the 17th, perfected the plan of temporary government, and fixed upon its principal officers, ten of whom were drawn from the thirteen members of the Committee of Safety. Between one and two o'clock, by squads and by different routes to avoid notice, and having first taken the precaution of ascertaining whether there was any one there to oppose them, they proceeded to the Government building almost entirely without auditors. It is said that before the reading was finished quite a concourse of persons, variously estimated at from 50 to 100, some armed and some unarmed, gathered about the committee to give them aid and confidence. This statement is not important, since the one controlling factor in the whole affair was unquestionably the United States marines, who, drawn up under arms and with artillery in readiness only seventy-six yards distant, dominated the situation.

The provisional government thus proclaimed was by the terms of the proclamation "to exist until terms of union with the United States had been negotiated and agreed upon". The United States Minister, pursuant to prior agreement, recognized this government within an hour after the reading of the proclamation, and before five o'clock, in answer to any inquiry on behalf of the

Queen and her cabinet, announced that he had done so.

When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister's recognition of the provisional government, and states that it is not yet in the possession of the station house (the place were a large number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge. Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal, while the Committee of Safety, by actual search, had discovered that there were but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice. Accordingly, some hours after the recogni-

tion of the provisional government by the United States Minister, the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen upon the representation made to her that her cause would thereafter be reviewed at Washington, and while protesting that she surrendered to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support the provisional government, and that she yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands.

This protest was delivered to the chief of the provisional government, who endorsed thereon his acknowledgment of its receipt. The terms of the protest were read without dissent by those assuming to constitute the provisional government, who were certainly charged with the knowledge that the Queen instead of finally abandoning her power had appealed to the justice of the United States for reinstatement in her authority; and yet the provisional government with this unanswered protest in its hand hastened to negotiate with the United States for the permanent banishment of the Queen from power and for the sale of her kingdom.

Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar and unpleasant name when found in private transactions. We are not without a precedent showing how scrupulously we avoided such accusations in former days. After the

people of Texas had declared their independence of Mexico they resolved that on the acknowledgment of their independence by the United States they would seek admission into the Union. Several months after the battle of San Jacinto, by which Texan independence was practically assured and established, President Jackson declined to recognize it, alleging as one of his reasons that in the circumstances it became us "to beware of a too early movement, as it might subject us, however unjustly, to the imputation of seeking to establish the claim of our neighbors to a territory with a view to its subsequent acquisition by ourselves". This is in marked contrast with the hasty recognition of a government openly and concededly set up for the purpose of tendering to us territorial annexation.

I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States. Fair-minded people with the evidence before them will hardly claim that the Hawaiian Government was overthrown by the people of the islands or that the provisional government had ever existed with their consent. I do not understand that any member of this government claims that the people would uphold it by their suffrages if they were allowed to vote on the question.

While naturally sympathizing with every effort to establish a republican form of government, it has been the settled policy of the United States to concede to people of foreign countries the same freedom and independence in the management of their domestic affairs that we have always claimed for ourselves; and it has been our practice to recognize revolutionary governments as soon as it became apparent that they were supported by the people. For illustration of this rule I need only to refer to the revolution in Brazil in 1889, when our Minister was instructed to recognize the Republic "so soon as a majority of the

people of Brazil should have signified their assent to its establishment and maintenance"; to the revolution in Chile in 1891,when our Minister was directed to recognize the new government "if it was accepted by the people"; and to the revolution in Venezuela in 1892, when our recognition was accorded on condition that the new government was "fully established, in possession of the power of the nation, and accepted by the people."

As I apprehend the situation, we are brought face to face with the following conditions:

The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may be safely asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.

But for the notorious predilections of the United States Minister for annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed.

But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.

But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building.

And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Stevens' recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for

the sole purpose of submitting her case to the enlightened justice of the United States.

Believing, therefore, that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration, and in the instructions to Minister Willis, a copy of which accompanies this message, I have directed him to so inform the provisional government.

But in the present instance our duty does not, in my opinion, end with refusing to consummate this questionable transaction. It has been the boast of our government that it seeks to do justice in all things without regard to the strength or weakness of those with whom it deals. I mistake the American people if they favor the odious doctrine that there is no such thing as international morality, that there is one law for a strong nation and another for a weak one, and that even by indirection a strong power may with impunity despoil a weak one of its territory.

By an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair. The provisional government has not assumed a republican or other constitutional form, but has remained a mere executive council or oligarchy, set up without the assent of the people. It has not sought to find a permanent basis of popular support and has given no evidence of an intention to do so. Indeed, the representatives of that government assert that the people of Hawaii are unfit for popular government and frankly avow that they can be best ruled by arbitrary or despotic power.

The law of nations is founded upon reason

and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond a breach of which subjects him to legal liabilities; and the United States in aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.

These principles apply to the present case with irresistible force when the special conditions of the Queen's surrender of her sovereignty are recalled. She surrendered not to the provisional government, but to the United States. She surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States. Furthermore, the provisional government

acquiesced in her surrender in that manner and on those terms, not only by tacit consent, but through the positive acts of some members of that government who urged her peaceable submission, not merely to avoid bloodshed, but because she could place implicit reliance upon the justice of the United States, and that the whole subject would be finally considered at Washington.

I have not, however, overlooked an incident of this unfortunate affair which remains to be mentioned. The members of the provisional government and their supporters, though not entitled to extreme sympathy, have been led to their present predicament of revolt against the Government of the Queen by the indefensible encouragement and assistance of our diplomatic representative. This fact may entitle them to claim that in our effort to rectify the wrong committed some regard should be had for their safety. This sentiment is strongly seconded by my anxiety to do nothing which would invite either harsh retaliation on the part of the Queen or violence and bloodshed in any quarter. In the belief that the Queen, as well as her enemies, would be willing to adopt such a course as would meet these conditions, and in view of the fact that both the Queen and the provisional government had at one time apparently acquiesced in a reference of the entire case to the United States Government, and considering the further fact that in any event the provisional government by its own declared limitation was only "to exist until terms of union with the United States of America have been negotiated and agreed upon," I hoped that after the assurance to the members of that government that such union could not be consummated I might compass a peaceful adjustment of the difficulty.

Actuated by these desires and purposes,and not unmindful of the inherent perplexities of the situation nor of the limitations upon my power, I instructed Minister Willis to advise the Queen and her supporters of my desire to aid in the restora-

tion of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned. The conditions suggested, as the instructions show, contemplate a general amnesty to those concerned in setting up the provisional government and a recognition of all its bona fide acts and obligations. In short, they require that the past should be buried, and that the restored Government should reassume its authority as if its continuity had not been interrupted. These conditions have not proved acceptable to the Queen, and though she has been informed that they will be insisted upon, and that, unless acceded to, the efforts of the President to aid in the restoration of her Government will cease, I have not thus far learned that she is willing to yield them her acquiescence. The check which my plans have thus encountered has prevented their presentation to the members of the provisional government, while unfortunate public misrepresentations of the situation and exaggerated statements of the sentiments of our people have obviously injured the prospects of successful Executive mediation.

I therefore submit this communication with its accompanying exhibits, embracing Mr. Blount's report, the evidence and statements taken by him at Honolulu, the instructions given to both Mr. Blount and Minister Willis, and correspondence connected with the affair in hand.

In commending this subject to the extended powers and wide discretion of the Congress, I desire to add the assurance that I shall be much gratified to cooperate in any legislative plan which may be devised for the solution of the problem before us which is consistent with American honor, integrity, and morality.

GROVER CLEVELAND
Executive Mansion, Washington,
December 18, 1893

APPENDIX II

Public Law 103-150
103d Congress

Joint Resolution

Joint Resolution to acknowledge the 100th anniversary of the January 17, 1983 overthrow of the Kingdom of Hawaii, (S.J. Res. 19) and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;

Whereas, a unified monarchial government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

Whereas, the Congregational Church (now known as the United Church of Christ), through its American Board of Commissioners for Foreign Missions, sponsored and sent more than 100 missionaries to the Kingdom of Hawaii between 1820 and 1850;

Whereas, on January 14, 1893, John L. Stevens (hereinafter referred to in this Resolution as the "United States Minister"), the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and

lawful Government of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendants of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas, the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by the conspirators without the consent of the Native Hawaiian people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law;

Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government;"I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for the Kingdom.

"That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

"Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under

protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands.".

Done at Honolulu this 17th day of January, A.D. 1893;

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms;

Whereas, on February 1, 1893, the United States Minister raised the American flag and proclaimed Hawaii to be a protectorate of the United States;

Whereas, the report of a Presidentially established investigation conducted by former Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded the United States diplomatic and military representatives had abused their authority and were responsible for the change in the government;

Whereas, as a result of this investigation, the United States minister to Hawaii was recalled from his diplomatic post and the military commander of the United States armed forces stationed in Hawaii was disciplined and forced to resign his commission;

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress", and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Whereas President Cleveland further conclud-

ed that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair" and called for the restoration of the Hawaiian monarchy;

Whereas the Provisional Government protested President Cleveland's call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

Whereas the Provisional Government successfully lobbied the Committee of Foreign Relations of the Senate (hereafter referred to in this Resolution as the "Committee") to conduct a new investigation into the events surrounding the overthrow of the monarchy;

Whereas the Committee and its chairman, Senator John Morgan, conducted hearings in Washington, D.C., from December 27, 1893, through February 26, 1894, in which members of the Provisional Government justified and condoned the actions of the United States Minister and recommended annexation of Hawaii;

Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;

Whereas, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawaii;

Whereas, on January 24, 1895, while imprisoned in Iolani Palace, Queen Liliuokalani was forced by representatives of the Republic of Hawaii to officially abdicate her throne;

Whereas, in the 1896 United States Presidential election, William McKinley replaced Grover Cleveland;

Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii;

Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States;

Whereas the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Whereas, the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;

Whereas the Newlands Resolution also specified that treaties existing between Hawaii and foreign nations were to immediately cease and be replaced by United States treaties with such nations;

Whereas the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government;

Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

Whereas, on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii and defined the political structure and powers of the newly established Territorial Government and its relationship to the United States;

Whereas, on August 21, 1959, Hawaii became the 50th State of the United States;

Whereas the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

Whereas the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;

Whereas the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions;

Whereas, in order to promote racial harmony and cultural understanding, the Legislature of the State of Hawaii has determined that the year 1993 should serve Hawaii as a year of special reflection on the rights and dignities of the Native Hawaiians in the Hawaiian and the American societies;

Whereas the Eighteenth General Synod of the United Church of Christ in recognition of the denomination's historical complicity in the illegal overthrow of the Kingdom of Hawaii in 1893 directed the Office of the President of the United States Church of Christ to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and the Native Hawaiians and;

Whereas it is proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts of the State of Hawaii and the United Church of Christ with Native Hawaiians: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACKNOWLEDGEMENT AND APOLOGY.

The Congress-

(1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;

(2) recognizes and commends efforts of reconciliation initiated by the State of Hawaii and the United Church of Christ with Native Hawaiians;

(3) apologizes to the Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;

(4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and

(5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people.

SEC. 2. DEFINITIONS.

As used in this Joint Resolution, the term "Native Hawaiian" means any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

SEC. 3. DISCLAIMER.

Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Approved November 23, 1993.

APPENDIX III

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Restoration of the Independent Nation State of Hawai'i under International Law

PROFESSOR FRANCIS ANTHONY BOYLE

I understand that the Sovereignty Commission[1] is looking into models and examples, of where the native people of Hawai'i can go in light of the state legislation that has been adopted, and also in light of the recent federal law that has just been signed into law by President Clinton.[2] I have been asked to discuss one particular model for the future for Native Hawaiian people to consider. I was not invited here to go through all the possibilities that you might have. The model I discuss here is certainly not the only potential option for the people of Hawai'i. It is not for me to tell Native Hawaiian people what to do. You, the Native people of Hawai'i, must decide for yourselves. But one thing I can do is describe a particular vision of the future; how you might go about achieving it; what would be the consequences; and what would be the basis of authority for doing it, particularly in light of Public Law 103-150[3] signed by President Clinton.

When I read the Public Law for the first time, the first thought that occurred to me is that now, after 100 years, the United States government, has finally and officially conceded, as a matter of United States law, that Native Hawaiian people have the right to restore the independent nation state you had in 1893 when the United States government came and destroyed it. Also, as a matter of international law, the Native Hawaiian people have the right to now go out and certainly proclaim the restoration of that state. I am not

talking about the state of Hawai'i as part of the United States of America. Rather, I am talking about an independent state under international law, and ultimately a member of the United Nations and other international organizations.

There is a recent example that was pursued by the Palestinian People, who in 1988 decided, of their own accord, to proclaim their own state.[4] This was a decision taken by the Palestinian People as a whole. It was subject to a majority vote because there was not unanimous consent, but even those who opposed it agreed to be bound by a majority vote. In 1988, the Palestinian people unilaterally proclaimed their own state in a Declaration of Independence. This unilateral Declaration of Independence eventually led to the recognition of the Palestinian state by 125 nation states in the world.[5] You don't read about that much here in the United States because the United States government is one of the few governments in the world to oppose the Palestinian state. But almost all of Latin America, Africa, and Asia recognize the existence of the state of Palestine. Again, these are indigenous people, like Native Hawaiians, striving for their right of self-determination. Indeed the Palestinians have the amount of votes to be admitted to the United Nations organization as a sovereign independent nation state, yet it is the threat of the United States veto that has prevented the admission of the state into the United Nations organization.[6] This however, has not prevented the vast majority of the states in the world from recognizing the existence of the Palestinian state. Even most of Europe would accord them formal de jure diplomatic recognition if not for the pressure brought to bear by the United States government. Therefore, many of the European states, which are the last holdouts, are today according them de facto recognition as an independent state. That is, they are treating the Palestinians as if they are an independent state, without formally coming out and announcing

it.

So, this is one model to consider that I will discuss. Not that the plight of the Palestinians are on all fours with Native Hawaiians, but there too, you have a situation of massive violations of fundamental human rights and people living under a regime of military occupation. In their case, for the last forty-five years; in your case, for the last one hundred years. So I will discuss some of the parallels with that process and what could be the Native Hawaiian process in the event that you were to decide to move in that direction.

I am not here to survey all the possibilities you might have, but I am prepared to comment on them. There are other things you could consider such as autonomy, returning to Article 73 status at the United Nations,[7] and semi-sovereignty.

There are various different types of status. But from my perspective, this is the route that other people in your situation have chosen to go. There is ample authority and precedent under international law for the Native Hawaiians to decide to move in that direction.

I begin by asking, how can this be done, how can you do it? What I am suggesting is that instead of asking the permission of the United States Congress to declare independence, you exercise your right of self-determination that has been afforded to you by the United Nations Charter, which states that, "[t]he purposes of the United Nations are to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."[8]

In contemplating this, there are four characteristics, or requirements, to consider in the creation of an independent state.[9] I submit - as I will point out as I go through the analysis - that the Native Hawaiian people, *Kanaka Maoli*, have all the requirements you need to go ahead and do this

if this is your choice. This is your decision.

The first requirement is that of a fixed territory. Clearly we have the Hawaiian Archipelago. Second is a population, a distinguishable population of people. The Native Hawaiians are such a distinguishable population who would trace their ancestry back before the appearance of Europeans on these lands. Third, there must be a government. Here you have your communal structures, the *kupunas* Kekuni Blaisdell, my friend, and the *kupuna* council, that you have traditionally had. You do not need a government along the lines of the federal government of the United States or the State of Hawaii to have a government. Rather, what you need is a way to organize your people to govern your relations with each other, and clearly you have that. The fourth requirement is the capacity to enter into international relations, to deal with other states, and to keep your commitments. As I understand it, there are already states in the Western Pacific region that support the Native Hawaiian people, and would probably be prepared to give you diplomatic recognition as an independent state, if this is your desire. I also suspect, like the Palestinians, there would be a large number of states certainly in the Third World, that have come out of a colonial situation, in Latin America, Africa, and Asia that would also be prepared to recognize you as an independent state and enter into diplomatic relations with you. Whether you would someday be allowed into the United Nations, of course, would depend on the U.S. veto. But the U.S. veto does not go on forever. Eventually the United States lifted its veto on the admission of Vietnam to the United Nations, despite the enormous hostility towards the people of Vietnam. Vietnam then became a member nation of the United Nations organization.[10]

So, that being said as preliminary, introductory remarks, I would like to go through the Public Law on a line-by-line basis and provide my

analysis of it. Indeed, I would encourage all of you, as Native Hawaiians, to study this. It makes it very clear what happened to you. This is now officially recognized as a matter of United States domestic law. You should be able to take this law, any time you are in court, and show it to the judge and the jury, and say, "this is the law; this is what has happened to me and my people and I am basing my conduct, whatever I am doing, on the basis of this law. It cannot be denied any more." As a litigator before the International Court of Justice, I would be able to take this law to the World Court and say, "the United States Court of Justice, I would be able to take this law government has now officially conceded that it illegally invaded and occupied the Kingdom of Hawaii. For this reason, the native people of Hawaii would be entitled to a restoration of their independent status as a sovereign nation state, to go back to what they were before the U.S. invasion, to undo the damage that had been done."

This law is styled as an apology, and one might say that yes, an apology is certainly here and it is long overdue. But it is not enough. When a government commits a severe violation of international law, as happened here, it should not simply apologize and then walk away. Damages are required, reparations, and in extraordinary circumstances, restitution, that is, to return the situation to what it was before the violation.[11]

This is especially true when you have a treaty violation. In the case of the Kingdom of Hawaii, there were three treaties on point, in law, with the United States government that were violated by means of the invasion. This violated international law at the time, the basic principle - *pacta sunt servanda* - treaties must be obeyed.[12] It even violated the terms of the United States Constitution at that time.[13] Treaties were the "supreme law of the land," and the invasion and annexation of Hawaii not only violated international law, but the United States Constitution

itself.

It's clear then, that the United States admitted in the law that they overthrew the Kingdom of Hawaii.[14] There is no question or doubt that this was a clearly illegal act, under the standards of international law in existence at that time.

An apology is certainly a start, but now we really have to deal with the consequences. What are the implications of this apology, of this law? That is the topic of which I address here. Indeed, the implications, I submit, are what you, the Hawaiian people, make of this. It is for you to decide the implications, not the Congress, not the State of Hawaii government, but rather the Hawaiian people, pursuant to your right of self-determination. What will be the implications of this, as you see it? What do you want?

In a meeting with Judge Nakea,[15] where I spoke on behalf of the Graces,[16] the judge said, "well, yes, but in the United States law, the United States government has always been able to extinguish the right of native peoples, and the Supreme Court has seen nothing wrong with that." I replied that, "well, that might be the case with respect to Native Americans living in the United States, but here in Hawaii you're in a very different situation. You had these three treaties, one of which was a treaty of friendship, commerce, and navigation,[17] that established good relations between two sovereign states, and they violated that, too."

This issue, a treaty of this nature, came up most recently in the World Court in the *Nicaragua* case,[18] when the World Court condemned the United States government for violating a treaty of friendship, commerce, and navigation by mining the harbors of Nicaragua. Certainly, the World Court can do the same thing - condemned the United States - for overthrowing a monarch and overthrowing and destroying an entire sovereign nation state.

Here you have the Congress of the United States of America admitting that in one of its own laws. That is very clear, this admission, what we lawyers call an "admission against interest." Congress has admitted what the United States did and it has opened this Pandora's Box. How should this be remedied? Again, the one point to keep in mind here is that it is now for the Hawaiian people to decide the appropriate remedy, not the Congress. The United States government is the criminal. The government admitted what it has done now, for the last 100 years - and that the American presence, then, in Hawaii, for the last 100 years has been nothing more than an illegal, colonial, military occupation regime.

In reading the Public Law it is important to remember the so-called "whereas" clauses. These clauses are official findings of fact and law by the United States Congress. These findings bind all state and federal courts here in Hawaii. I was pointing this out this afternoon to Judge Nakea with respect to the case of Mike and Sondra Grace, that the court and judges are bound by these findings of fact. They can no longer be contested or denied. The United States is stuck with them.

The next sentence of this law reads: "Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system, based on communal land tenure, with a sophisticated language, culture, and religion."[19] That concedes that Native Hawaiians, at that time and as of today, still have one requirement for an international state, which I mentioned, a government. You have a means to govern yourselves as a people. Congress has effectively conceded it right there. It is still in existence today. This is a type, a system of government that is historically separate and apart from the State of Hawaii or the United States federal government. It is still there, and it still works today. I have seen it in my visits with the

Ohana Council, the people of Hawaii providing shelter, food, housing, education, dispute settlement procedures and mechanisms. The types of things that you did a hundred years ago, before the U.S. invasion, to some extent you are still doing today. It would simply be a matter of expanding those types of functions that you provide for your own people.

In the case of Palestine, this involves building the state from the ground up. The Palestinian People rejected participation, acquiescence, and collaboration with, Israeli military occupation forces. They proceeded to provide to their own people, social services such as health, education, judges, dispute settlement, etc.[20] That is building the state from the ground up; that is how you build a state. No one is going to give it to you. I doubt very seriously that tomorrow the U.S. Congress is just going to pass a statute and give you a state. Rather, you must go out and say, "we're creating our state. Here it is, and we ask you to recognize the state, and then the consequences from there."

The next sentence of the law reads: "Whereas, a unified monarchial government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii."[21] Again, Congress is admitting that you had a government. You had a state. It was there. It was viable and functioning. It was internationally active. This was not a position the U.S. government maintains with respect to Native Americans.[22] Now here the government is wrong too. The United States maintains that Native Americans did not have a state-type structure that had to be recognized, because it was somewhat different from the structures of government that Europeans were under on the North American continent.[23] We know the government is wrong. The Native Americans did have a governing structure. The Europeans simply did not want to recognize it, but instead wanted to steal the land.[24]

Putting that aside, you are in a very different situation here from Native Americans. Congress has conceded what it will not concede for the Native Americans[25] that you had a state, a state just like any other state in existence at that time just like the United States of America and that you were entitled to as much respect and dignity. Congress has now conceded this point. I read in the newspaper that during his visit to Hawaii, Secretary of Interior Bruce Babbitt asked, "should Native Hawaiians be treated by the federal government like the Native Americans?" My response to reading that was, "why would you want to do that?" The tape of the San Francisco Tribunal shows that Native Americans are up against genocide and extermination. That is the policy of the federal government with respect to Native Americans. So I do not understand why Native Hawaiians would want to buy into that system, and be treated in that system in a way that ultimately would lead to your extermination. That is certainly the way large numbers of Native Americans see it. That was the purpose of the San Francisco Tribunal. I would encourage you, if you haven't seen it, to look at that tape. So whatever you do, I would certainly caution you against trying to seek the same type of treatment that the federal government has doled out to the Native Americans. We know where that will lead.

On the basis of this statute, moreover, you are entitled to a lot more than they give the Native Americans. That is not to say that, in my opinion, the Native Americans are not also entitled to establish themselves as independent nations, if that is their desire. But the difference here is that your right to do this, the predicate to do this, has now been recognized by the United States Congress itself,[26] whereas the Congress has never recognized this for Native Americans.[27] I doubt Congress ever will, because to fully recognize Native American sovereignty would eliminate the whole basis of speudo-legiti-

macy upon which the United States Congress rests land title and everything else. I doubt very seriously that Congress would want to do that.

The next paragraph of the law states that, "from 1826 to 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, entered into treaties and conventions ... to govern commerce and navigation and friendship.[28] Congress did not draft the word "friendship" into this law.

In fact, Congress wanted the word "friendship" but the treaty was friendship and commerce. Here Congress admits that the invasion, overthrow, occupation, and annexation, starting in 1893, violated all these treaties. It violated basic norms of international law, even in existence at that time and that was a pretty bad time, one must admit. States were going to war, people were killing each other, the strong doing what they will, the weak suffering what they must, pretty much like today in the New World Order. But again, here, the United States Congress has taken the position that this behavior was illegal under international law, even in accordance with the minimal standards in effect at that time. Again this distinguishes the case of the Native Hawaiians from the Native Americans, where they have yet to admit that there was anything wrong under international law with the way they treated the Native Americans. If you read all the Supreme Court cases, they say that this is just the right of conquest, and those were the rules in existence at that time.[29] But in the case of the Native Hawaiians, the United States admits that this was not just a question of right of conquest, but of treaty violations. They were violated.

The government acts violated international law. It even violated the terms of the United States Constitution at the time when treaties were the "supreme law of the land."[30] So again, legally you are in a much different, much better situation

than Native Americans.[31]

"On January 14, 1893, John L. Stevens ... the U.S. Minister ... conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful government ...."[32] So again, Congress concedes that the government of the Kingdom of Hawaii was the lawful government at the time, and that an official agent of the United States government conspired to overthrow the government of Hawaii. The United States government is bound by the actions of its agents, of its ministers.[33] The government therefore cannot say, "he did it, and later on we condemned what he did." You know the President did shed a crocodile tear or two over what he did, did he not, right? There was a statement. That is not enough. Of course it isn't. If the minister did it, it is just the same as the President doing it. There is no difference. The President was bound by the actions of his minister. The United States government was bound by the actions of the minister. Thus, it was the United States government that conspired to overthrow the lawful government of the Kingdom of Hawaii. Again, an internationally illegal act at the time it was done.

The next paragraph continues, "pursuant to the conspiracy ... naval representatives called armed forces to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian government buildings and the (Iolani) Palace to intimidate the Queen (Liliuokalani) and her government."[34] Notice the use of the word "invade." Today we prefer to use euphemisms such as "incursion." That is another word for invasion. But here Congress significantly calls an invasion an invasion. That is what it was, a clearly illegal act, an invasion in violation of treaties and international agreements, an invasion in violation of international law, and an invasion in violation of the United States Constitution - the overthrow of a lawful govern-

ment.

Under international law when you have a violation of treaties of this magnitude, the World Court has ruled that the only appropriate remedy is restitution.[35] Damages are not enough. Reparations are not enough that is the payment of money, or giving you an island over here and saying: Here, you can have that island. That is not enough. Restitution is to restore what you once had, that is the Kingdom of Hawaii, that is your independent nation state. This is the appropriate remedy, if that is what you want for what was done.

The Public Law goes on from here, reciting the sorry history of what happened, the establishment of the provisional government.[36] Well, that is not entitled to any legitimacy at all. It was imposed by raw, naked, and brutal military force, at the point of a bayonet, gunboat diplomacy, just as was practiced in many other countries, only here now Congress is finally admitting this.

The next paragraph points out that the establishment of this provisional government was without the consent of the Native Hawaiian people or the lawful government of Hawaii, and violated all of the international treaties and agreements.[37] So under international law, you would not call this a provisional government. I certainly would not call it that. You would call it a government of military occupation. Certainly I would suggest that that would be an appropriate way to think about it. That is, you had military forces here and then you had a civilian arm of the military occupying regime.

You see the same thing today in the occupied Palestinian lands where the Israeli occupying forces have set up a civilian arm of their military occupation authorities to administer the civil affairs of the Palestinian people.[38] These matters, by the way, are currently the subject of the negotiations between the Palestinian Liberation Organization (PLO) and Israel today.

The negotiations centered around the withdrawal of the civilian military occupation arm, and the withdrawal of the military occupation forces themselves.[39] Indeed, the September 13, 1993 agreement calls for the dissolution of the civilian occupation arm and then the withdrawal of the military occupation forces themselves.[40]

I submit, therefore, that this "provisional government" referred to in the Public Law is really the civilian arm of a military occupation force. That was the predecessor to the current government of Hawaii that administers you today. Again, following the implications of that law, the state government of Hawaii occupies a similar position to that provisional government. Of course you have federal military forces here keeping it in power. Again, somewhat similar to the arrangement in Palestinian lands.

We then come to the very famous statement by your Queen, "that I yield to the superior force of the United States of America,"[41] and you are aware of the rest of the language. She made it very clear that this statement and her later abdication were procured under duress and force. In other words, it could not be treated by anyone as a valid surrender of sovereignty by the Native Hawaiian people at all and she made that very clear in this language. So in other words, she was simply bowing to superior power, but not as a matter of right or of law. I have done a similar thing myself in the Bosnia case in the World Court.[42] I pointed out in a file communicating with the World Court, that the so-called Owen-Stoltenberg plan[43] to partition the Republic of Bosnia and Herzegovina, was concluded, or arguably still might be concluded, by means of threats and duress, compulsion and coercion. It was therefore invalid, or would be invalid, under international law and the Vienna Convention of the Law of Treaties.[44] This type of behavior still goes on today. But your Queen, a very powerful person, made clear that she was simply yielding to superi-

or force, and thus preserving the rights of her people for the future - their right of self-determination and their right to restoration of their sovereignty.

The law goes on, with Congress admitting that "[w]ithout the active support and intervention by the United States ... the insurrection ... would have failed for lack of popular support and insufficient arms."[45] I was reading a little letter by the fellow who traces his ancestry to one of the missionaries [Thurston Twigg-Smith] who pulled this thing off which states, "well, we should stop all this debate, these were real genuine patriots, etc., etc.,"[46] and of course they were entitled to do what they did. Well, apparently he didn't bother to read the law. He can say whatever he wants, but Congress has now made it very clear what happened. He can argue till the cows come home but this is now the law. He had better read it. In fact Congress has condemned what his ancestors did. Now the simple question is, where do the Native Hawaiian people want to go from here?

Well, again, "the U.S. minister raised the flag and declared Hawaii to be a protectorate of the United States."[47] Of course that's nonsense. They did not protect anything, did they? Was there a need to protect Hawaii form itself, form its own people? Who was threatening Hawaii at that time? It was the United States. They needed protection from the United States, so this is absurd. It was entitled to no legal validity at all at the time and is not now. That is basically what Congress is saying.

The Blount Report states that "military representatives had abused their authority and were responsible for the change in government."[48] Again, this is further admission that the United States acted illegally under international law. But an admission is not enough. The implication then, of these admissions by Congress, by the Blount Committee, is that there must be restitu-

tion.[49] The Hawaiian people have a right to be returned to the situation they were in, as of January 17, 1893. This is your right if that's what you want. The federal government disciplined the minister and forced him to resign his commission. Well, of course, they should have done that, but that should not have been the end of the process. The overthrow should have been reversed. They had the authority to do it; the President could have done it if he had wanted to, he just did not do it. So this is simply eye-washing. It is nice that they finally conceded these points, but it is not enough under international law.

I do not know how the Native Hawaiians feel about it. I suspect maybe they would agree with me that it is certainly not enough. Where it should lead form here is another issue. Again, I'm trying to point out, line by line, that this Resolution clears up all these matters, all debate, all argument, and it makes it very clear here. You have a right to restoration, to restitution, and to proclamation of your state. You do not need the permission of Congress to do this. Congress might not like it, but it is kind of stuck with its law, is it not?

President Cleveland's message to Congress admitted all this. "An act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress."[50] The President clearly admitted that this was illegal behavior of the most heinous type. A "substantial wrong" was done, calling for the restoration of the Hawaiian monarchy.[51] Now of course, there was no restoration, but that does not change the legal situation. Today over 100 years later, you have a right to restore it yourselves, if that is what you want to do. You do not need to petition Congress to do it. Congress has given you everything you need right here to do it. The United Nations Charter provides the rest of the authority to do it.[52]

The Newlands Joint Resolution[53] provided for

the annexation of Hawaii. Where is the authority for this? There is none. They stole the land, the country, displaced the government, and now they have annexed it. This very issue was addressed by the Nuremberg Tribunal in 1945, where the German Nazi government tried to maintain that some of the annexations of foreign territory that it had undertaken before and during the Second World War were entitled to legal recognition. The Nuremberg Tribunal itself in 1945 said, "no annexations are valid prior to the conclusion of a peace treaty."[54]

The United States government and the President conceded that they engaged in acts of war, that they are occupying your land and that they put themselves at war with your people.[55] Now they have annexed it, but the annexation has no validity under international law. If, as part of the peace treaty between Hawaii and the United States you concede them some land that's up to you, that's your choice. Or if you want to give the federal government operating facilities for a base upon the payment of funds and rent or something, that's for you to decide. But, now they have effectively, in this law, invalidated the entire annexation. The whole legal basis for it has now been invalidated.

If the annexation of the land is invalid, then where does the title come from, who has title to land? It is the Native Hawaiian people who retain title to the lands of Hawai'i, as a matter of international law. It is not the federal government, not the state government, but the people themselves. That is the implication here, certainly as I read this section, as an international lawyer. Again these findings of fact and conclusions of law are now officially set forth by Congress. It is only one step, as I am trying to point out here. What are the implications then of these findings of fact and conclusions of law?

The law next reads that, "[t]he Newlands Resolution, the...Republic of Hawai'i ceded sover-

eignty over the Hawaiian Islands to the United States."[56] But, the Republic of Hawai'i never had sovereignty over the Hawaiian Islands.[57] We have already determined that the so-called Republic of Hawai'i was the civilian occupying arm of a military occupation authority. It had no sovereignty. Military occupation forces, even though they are there and are present, do not exercise sovereignty over the territories they occupy. Sovereignty remains in the hands of the displaced sovereign. This is black letter international law.[58] This is the issue at stake in the Middle East peace negotiations between the Israelis and Palestinians. The Israelis do not have sovereignty over the West Bank, the Gaza Strip, or East Jerusalem. They are a military occupation authority. They exercise administrative powers, but they do not have sovereignty. They never did. The sovereignty remains in the hands of the Palestinian people and they have proclaimed a state. Again I submit there is a parallel here for Native Hawaiian people. Sovereignty resides in your hands. This so-called Republic never had sovereignty to cede to the United States, and that is pretty clear from just reading through the Resolution and moving one step forward from the analysis set forth here.

"The Republic of Hawai'i also ceded 1,800,000 acres of crown, government, and public lands of the Kingdom of Hawai'i, without the consent of or compensation to the Native Hawaiian people, or their sovereign government."[59] The Republic had no authority to do this, for the reasons I have already spelled out here. The government of the Republic of Hawai'i was a military occupation authority, the civilian arm, without any sovereign claims to the land under the laws of military occupation and the laws of war. So they had no power to cede anything. The title to the land rested and still rests, under international law, with the Native Hawaiian people.

I tried to make this point in my discussion with Judge Nakea. How can it be said that the

Graces trespassed on their own land. The trespassers then become the State of Hawai'i, the land developers, the golf courses, and the resorts. Then, what this law does is point out that the whole situation is completely turned around on its head. It now changes the whole way that these authorities should be looking at the matter. The Federal government is the trespasser and the criminal. You are simply the Native Hawaiians asserting your rights under international law. Now this arrangement, as it were, this reversal of positions between who is the criminal and who is the victim, and between who is asserting their right and who is violating their rights, has been effectively conceded by Congress.

In this regard, I would encourage all Native Hawaiians to know what your rights are. Get a copy, a little hand copy, of the Universal Declaration of Human Rights[60] and carry it around with you. Your rights are in there.

With respect to what Bumpy Kanahele and his people are doing out on the beaches, in the settlements, Article 25 of the Declaration provides "everyone has the right to a standard of living adequate for the health and well being of themselves and their family, including food, clothing, housing, medical care and necessary social services."[61] They have a right to have housing, that is clear. The State of Hawai'i has no right to throw you out of your own homes. Even if those homes are nothing more than tents on a beach, they are still your homes. Where is the governments right now, if they ever had any, after the passage of this law? I don't see it. It is no longer there.

The same right exists with respect to attempts to destroy your temples and places of worship. Article 18 of the Declaration provides that "everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to manifest his religion or belief in teaching, practice, worship, and obser-

vance."[62] So where is the right of the State of Hawaii, or a real estate developer, or a resort developer, to destroy any of your temples, when these are your temples, this is your land, and your right to worship is guaranteed in the Universal Declaration? I don't see that right any more and indeed it will be very hard for them to argue that now that this law has been passed. I won't go through the applicability of all the Universal Declaration of Human Rights to the activities of Native Hawaiians here in relations of the state and federal governments. Again I would encourage you to get this from Amnesty International. They have them available. Read through it, and understand what your rights are, and proceed to assert them in your dealings with the state and federal government.

"Whereas, the Congress . . . annexed Hawaii . . . and vested title to the lands in Hawaii in the United States."[63] This is clearly illegal. We have already seen it. The annexation was invalid. The United States cannot get title from the Republic of Hawaii because the Republic never had title in the first place. They had no sovereignty. They were nothing more than a military occupation power. And a military occupation power cannot validly transfer title to land. Again, black letter international law.[64] That is why, today the United States government condemns the illegal settlements in occupied Palestinian land. You cannot transfer title; the occupying power cannot sell land legally. I mean they can do it, but that doesn't make it lawful. It is invalid. It is illegal. So an occupying power cannot sell land, they do not control title, sovereignty. They can administer, but that is all, arguably, that they can do. In theory, they are obliged to leave, not to stay.

The law goes on to state: "Whereas, the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States government."[65] The Newlands Resolution is

entitled to no validity at all, since it is based on an illegal invasion, a violation of treaties, and a violation of the principle of pacta sunt servanda.[66] Many, many violations of law have accrued as a result of this.

Congress admits that "the indigenous Hawaiian people never directly relinquished their claims to..inherent sovereignty...through a plebiscite or a referendum."[67] This got back to the question of what happened, back in, what '59, right? What validity was that entitled to? Well, now Congress is saying, none. I would say even before this, none, because you did not have a plebiscite conducted by the United Nations organization itself. This would have been a requirement if Article 73 of the U.N. Charter had been carried out.[68] The United Stated did not do that. Congress is effectively conceding now that the so-called vote is meaningless, as a matter of international law and of United States domestic law. So you are not bound by it. Rather, I am suggesting that you are now free to determine your own fate pursuant to the principle of self-determination in Article 1, Paragraph 2 of the United Nations Charter.[69]

Moving further through the Public Law, we encounter more admissions. "Whereas, the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people"[70] Well that is an understatement. The Hawaiian people have been subjected to the international crime of genocide, as determined and defined by the 1948 Genocide Convention,[71] and the 1987 Genocide Convention Implementation Act,[72] the Proxmire Resolution. That is clear. That was one of the finding of the San Francisco Tribunal. That was one of the key findings of the Tribunal held here this summer concerning Hawaii (Ka Ho'okolokolonui Kanaka Maoli). Having argued genocide myself to the International Court of Justice, and having convinced them that genocide is going on in

Bosnia-Herzegovina,[73] I submit that there would be no difficulty in convincing the World Court that genocide has been practiced by the United States government against Native Hawaiians. Now, that is bad enough, but where does that lead you? I suggest that where it leads you is back to the creation of a State. One of the few and only protections a people have from being exterminated, by means of genocide, is their own state and ultimately, United Nations membership.

That is what happened to the Jews. From 1939 to 1945 they did not have a state. They did not have membership in the League of Nations. So everyone looked the other way and they were exterminated. Today, the situation is being replayed with the Bosnians. The Bosnians do not have a state and they do have U.N. membership.[74] This is the one thing they have that is keeping them from going the same way as the Jews. The Palestinians recognize this too. They had to proclaim a state in order to protect themselves from being annihilated. So a state, an independent sovereign nation state, is one way a people who are threatened with extermination by means of genocide, can attempt to protect themselves. According to the statistics that Kekuni Blaisdell presented to the San Francisco Tribunal, the Native Hawaiian people are threatened with extinction by the year 2030. This is something that has to be given very serious consideration. What is the best way to protect the existence of your people, as a people? Is it to accept the same status as Native Americans, which I guess Secretary Babbitt is considering graciously giving you? Or is it to proclaim your own state, and then ultimately seek international recognition and finally U.N. membership? Well, again, this is for you to decide. You have to consider the alternatives because ultimately it is your future and that of your children and your children's children that is at stake.

In the final 'whereas" clause, Congress states, "it is proper and timely for Congress to

acknowledge the historic significance of the illegal overthrow."[75] Before this, Congress talked only about an overthrow, but did not concede it was illegal, although it violated all these treaties. But now Congress says that it was illegal. In other words, in this law, Congress is agreeing with what I am saying here. It was illegal. If you had any doubt, now even Congress is agreeing. It was an illegal overthrow. It had no validity at all. The fruits of this overthrow are entitled to no recognition as being valid today. That calls into question the title to all the land here. Who's land is it? Well, it seems to me, from what Congress seems to be saying, the land is that of the Native Hawaiians.

The Resolution then addresses reconciliation efforts, about support for the reconciliation efforts.[76] Well, of course I am in favor of reconciliation. But there is more to it than that. Under international law, if you have a violation of this nature the appropriate remedy is not simply reconciliation, apology, or reparations, but is restitution.[77] That is, to set right the harm that has been done - to restore the situation to what it had been before the violation in 1893. There is a very famous case by the World Court, the Chorzow Factory[78] case, that would be the authority for this. In other words, sure, have reconciliation, but what about restoration? That clearly is what you are entitled to.

We now move to this Section 1, acknowledgment and apology.[79] The law again repeats, "illegal overthrow," so it is not simply my interpretation of the significance of the various "whereas" clauses. The "whereas" clauses were "resolved by the Senate and House of Representatives of the United States of America, in Congress and Senate, and signed by the President."[80] This operative provision of the law recognized the illegal overthrow and "acknowledges the historical significance of this event which was ultimately the suppression of the inherent sovereignty."[81]

The law, in effect, says that the Native Hawaiian people still have sovereignty. The sovereignty inheres in you. Now it is for you to decide what to do with this sovereignty, because the State of Hawaii and the federal government, are, as I have explained, the civilian arms of the military occupation authority. Military occupation authorities do not have sovereign powers. The sovereignty resides in the people. That is clearly the implication of Section 1 of the operative provision of the statute.

Paragraph 3 apologizes for the overthrow "with the participation of agents of the United States."[82] The U.S. government again is responsible for the actions of its ministers. Congress now called these people "agents." So their conduct, their illegal conduct, binds the United States government. Which means the United States government, then, is under an obligation to undo the harm that was done. But even if they do not, the Native Hawaiian people have a right to act to undo that harm. And if you doubt that, the rest of the sentence reads, "the deprivation of the rights of Native Hawaiians to self-determination."[83]

So in other words, Congress has conceded that the Native Hawaiian people have a right to self-determination. What does that right include? Well, as I have said, self-determination of peoples under the U.N. Charter provides a right to a state of your own and to membership ultimately, someday, in the United Nations organization,[84] just like the 188 other states that are currently members of the United Nations today.

Paragraph 4 expresses its commitment to acknowledge the ramifications.[85] What are the ramifications? Well, that is the subject of my discussion here. If you followed the analysis that I presented before, then I put forward here what I believe are the ramifications, the implications of the overthrow of the Kingdom of Hawaii. Now, whether that is the direction you want to go, that is for you to decide, not me.

Then finally, in the definitional section, Congress defines Native Hawaiians as "any individual who is a descendant of the aboriginal people, prior to 1778...occupied and exercised sovereignty, in the area that now constitutes the state of Hawaii."[86] This again, affirms that the native people of Hawaii were, and by implication still are, the sovereign authority in these lands. It is not the state, not the federal government, but the Native Hawaiian people themselves.

Based then on this public law, and going through it line by line, I would express the opinion that today the Kanaka Maoli have the right to exercise self-determination as a people in accordance with the U.N. Charter: To proclaim an independent state, if that is your desire, to join the world community of states as an independent nation state. This also means that you have the right to determine your political status, your type of governmental organization to govern yourselves through customary systems, and to freely pursue your economic, social, and cultural development in accordance with Article 1 of the International Covenant of Civil and Political Rights and the International Covenant of Economic, Social and Cultural Rights.[87] The United States government is a party to that first treaty. That treaty also recognized the right of Native Hawaiians to freely dispose of your natural wealth and resources, without prejudice to obligations arising out of international economic cooperation. This is your land. These are your natural resources. Whatever powers are exercised by the state and federal governments are those of a colonial occupation military regime. But the sovereignty still resides in the hands of the Native Hawaiian people. You have the territory necessary for a state. That is, the Hawaiian Archipelago, the lands that you had before the invasion of 1893. You would be entitled to claim a twelve mile territorial sea and a 200 mile exclusive economic zone, in accordance with customary international law and the Law of

the Sea Treaty of 1982.[88]

The second requirement of an independent state are the people. Again Congress has recognized the Kanaka Maoli people are a group of people with sovereign powers. You have lived here forever. You are the original inhabitants and occupants of these islands. You have always been in possession of your land. And so you would be entitled to reestablish an independent sovereign nation state in that land. Possession is nine-tenths of the law. You are still here; you are still living in your homes; you are still occupying your land. It might be true that the state and federal governments are illegally dispossessing you. But, you are still going back in there; you are still building settlements; you are still occupying it, and you are staying there. That is all the international law requires. As I have suggested, that certainly is your right under the Universal Declaration of Human Rights.[89]

Who would be your citizens? Well certainly the citizens would be those who are descendant of the Kanaka Maoli, who occupied and exercised sovereignty in Hawaii prior to the Europeans in 1778. You would trace your ancestors back. Again, it would be your right to determine who your citizens are. I take it you would reject this blood percentage that has been set up by the United States government. This is reminiscent of Nazi laws, that were applied to decide who was Aryan. Those laws, in turn, were patterned on laws in the American South, on miscegenation, who was a black and who was a white.[90] A state is free to determine who its own citizens are. Certainly you would be free to determine that all those who could trace their ancestors back to 1778 would automatically become citizens of the new state.

Now, what about those who are living here, who are not able to trace their ancestors back? What about them? This is an issue that has confronted several states today. For example, in the Baltics, Lithuania, Latvia and Estonia, there are

large numbers of Russian citizens who were left behind as a result of the Russian/Soviet occupation for the last fifty years. This is about half the amount of time you are dealing with here. The three Baltic states have taken different approaches. For a period of time, I advised the Republic of Lithuania under President Lansbergis, who was the hero and leader of their independence movement. He subsequently lost an election and the people voted the communist back in, so I no longer advise them. But the Lithuanians have taken a very generous approach to the Russians who remain, trying to integrate them into their society.[91]

Certainly the Hawaiian state could take the position that you'll set up a procedure to provide citizenship to all people who are habitual residents of the new state of Hawaii, as of a certain date. This would mean that those who have lived here continuously five years, ten years whatever cut off point you want are also themselves entitled to become citizens of this state on a level of equality with everyone else. Unlike the Native Hawaiians who would automatically become citizens, the habitual residents would have to apply for citizenship.

Again, there are precedents here in the way the Palestinians are dealing with these issues. They too have a Diaspora population. You have large number of Hawaiians all over the world who had to leave. Approaching it in this way would enable you to allow all of them to claim Hawaiian citizenship, if that is the case, if that's what they want to do, and to return. The Palestinians did it that way. They set up a state, and said that they were setting up a state for all Palestinians everywhere in the world. In theory, those who want to be citizens of the state can claim it and be admitted. Also there are a large number of Jewish settlers living in occupied Palestine. The Palestinians have taken the position that they are prepared to accept a certain number of Jewish settlers as citizens of their

state on a basis of equality with everyone else, provided that they are prepared to be peaceful, law abiding citizens, treated as equals.

So there are precedents for the new state of Hawaii to take a similar position for those non-Native Hawaiians who live here. That is, telling non-native residents that you are setting up an inclusive state and want them to stay and to apply for citizenship in the new state. It could be done in a way that they would not have to renounce their U.S. citizenship if that's what the Native Hawaiians decide. That could be a big issue with the current generation of non-Native Hawaiians living here. It probably would not be a big issue for the next generation. They would be Hawaiian at birth, entitled to citizenship at birth, and probably whether they would claim U.S. citizenship would not be all that important. But for those who are here who are U.S. citizens, it would be possible to allow them to become dual nationals. That is, they would apply for Hawaiian citizenship without having to give up U.S. citizenship. This would be fully consistent with the United States law.

I was born in the United States, but I applied for Irish citizenship. My family is Irish. I have Irish citizenship and an Irish passport. The Irish have been subjected to genocide, too. We know what it is all about. We are a Diaspora people too. We have people all over the world. So we have an inclusive form of citizenship that allows people to claim it without having to give up whatever other citizenship they have as well. The Native Hawaiian state could approach the question of citizenship in a similar way.

I have already discussed that the system of government, again the third requirement that you would need, and I believe you have it, for an independent state. You have your Kupuna system. As I said, Congress has recognized "a highly organized, self-sufficient, social system based on communal land tenure, maintaining order through

mediation."[92] That is all you need, and you have that. So you would simply work that out, the implications of that system on a nation state basis, that is, the new Hawaiian state basis. That would be the way the new Hawaiian state would be governed, not the current situation as you see it today.

The final requirement is the capacity to enter into international relations. Again here, if you were to declare an independent state, you would probably obtain recognition in that capacity from a fairly large number of states. I could not predict the number of states that would recognize you. I don't know. You would have the same problems encountered in the creation of the Palestinian state.[93] We did not know how many states would recognize the Palestinian state back in August of 1988, before it was created. But as of December 1993, 125 states recognized the state of Palestine. Someday the state of Israel will recognize the state of Palestine. The state of Palestine already recognizes the state of Israel. There can be peace and reconciliation between those two peoples as well.

I can not predict how long this would take, what would be the consequences, or how many states will recognize you. However, I take it that the plight of the Hawaiian people is generally well known in the world, and there's a great deal of sympathy. For a variety of reasons, the Palestinians have had an uphill struggle and battle in obtaining that recognition. So, it might be that you would be able to obtain recognition quickly, especially if you pursue this process in accordance with principles of peaceful, non-violent struggle. I submit that is the most effective technique you have today. If you doubt me, you would read Gandhi's book, Satyagraha, about non-violent civil resistance.[94] The book explains how Gandhi threw the mighty British Empire out of India without using force. People power is what we call it today. I submit that the Native Hawaiian

people would be able to do the same thing, moving in this direction and adopting the techniques of peaceful, non-violent action, such as those called for by Gandhi.

In conclusion, I reiterate that this discussion is not presented as a solution to any problems. My assignment here, as I understood it, was to sketch, briefly, one outline, one alternative, that the Native Hawaiian people can consider among other available alternatives. Ultimately, it is your choice-not the choice of the United States Congress, not the choice of the State of Hawaii. And with all due respect to the Commissioners here, it is the choice of the Native Hawaiian people. They have the right to self-determination. They have the inherent sovereignty. Their rights have now even been recognized by the United States Congress itself. So, it is no longer just me giving an opinion as a law professor. But rather, the opinion presented here is based upon these formal findings of fact and law by the United States Congress.

Recent actions continue to provide the Hawaiian sovereignty movement greater power and legitimacy. Since these remarks were presented in Hawaii in December 1993, new developments have continued to demonstrate the importance of the Hawaii sovereignty issue.

The plebiscite to be conducted late this year will allow about 274,000 Native Hawaiians to cast a ballot deciding whether or not they want to elect delegates to a convention that may recommend some form of native Hawaiian government.[95]

The Ohana Council, however, condemns this upcoming vote as "a direct interference with the recognized inherent right of the people and their process of self-determination, a deliberate attempt to confuse the issue and suppress the rightful process of restitution and restoration."[96] The Ohana Council declared its independence (for both its 10,000 members and all native Hawaiians) from the United States from January

1994, proclaiming itself the Nation of Hawaii.[97]

In the spring of 1994, following President Clinton's formal apology to native Hawaiians in November 1993, the United States Navy returned the island of Kahoolawe, which had been taken during World War II. The federal government signed quit-claim deeds (one in English and one in Hawaiian) returning the island, which will hold the island in trust for the Hawaiian Sovereign Nation. Congress has since authorized $400 million for restoration of the island long used as a bombing and target range.[98]

There is much yet to be done, however. In October 1994, the Intermediate Court of Appeals of Hawaii rejected claims by Native Hawaiians that the state courts lacked jurisdiction over members of the Kingdom of Hawaii, a sovereign nation.[99]

If Native Hawaiians wish to establish their sovereignty, then this court opinion is not determinative of the recognition at stake. This is simply another state action that would not be binding upon an independent state. The recognition of the illegal overthrow has already been made by the United States. Because the over throw was illegal, the present governing system could be rejected by the native Hawaiians. The law now exists, admitting the illegality of government action. It is now up to the Native Hawaiian people to decide how to proceed...

Footnotes

An earlier version of the author's remarks was delivered to the Hawaiian Sovereignty Advisory Commission on December 28, 1993.

** A.B., 1971, Univ. of Chicago; J.D. (M.C.L.), 1976; A.M., 1978; Ph.D., 11983, Harvard; Professor of Law, University of Illinois College of Law. I express gratitude to Bumpy Kanehele and the members of the Ohana Council for sponsoring me during my stay in Hawaii.

1. See 1993 Haw. Sess. Laws 1009, 1011 (creating the Hawaiian Sovereignty Advisory Commission to advise the Legislature in carrying out the purposes of The Act Relating

to Hawaiian Sovereignty).

2. Overthrow of Hawaii Resolution, Pb. L. No. 103-150, 1993 U.S.C.C.A.N. (107 at.) 1510.

3. Id.

4. See John Quigley, Palestine's Declaration of Independence: Self-Determination And The Right of The Palestinians to Statehood, 7 B.U. INT'L. L.J. 1 (1989).

5. Id.

6. See, e.g., Ved Nanda et al., Self Determination: The Case of Palestine, 82 AM. SOC'Y INT'L. L. PROC. 334, 344 (1988).

7. U.N. CHARTER art. 73 ("Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interest of the inhabitants of these territories are paramount...")

8. U.C. CHARTER art. 1, ¶ 2.

9. See Convention on Rights and Duties of States adopted by the Seventh International Conference of American States, Dec. 26, 1933, 165 L.N.T.S. 19, 25 (listing the requirements for an independent state).

10. Assembly Opens New Session: Admission of Djbouti, Vietnam, UN MONTHLY CHRON., Oct. 1977, at 5, 6.

11. Case concerning The Factor at Chorzow, 1928 P.C.I.J. (ser. A) No. 17, at 1 (Sept. 13).

12. Vienna Convention on the Law of Treaties, May 23, 1969, art. 26, 1155 U.N.T.S. 331.

13. SEE U.S. CONST. art VI, cl. 2 ("all Treaties ... shall be The Supreme Law of the Land").

14. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512 ("Whereas it is proper and timely for the Congress ... to acknowledge the historic significance of the illegal overthrow").

15. The Honorable Clifford L. Nakea serves in the 5th Judicial Circuit of the State of Hawaii, District Court.

16. Michael Grace and Sondra Field built a house in the Anahola Beach Park on the island of Kauai. When ordered to vacate the park by the Hawaiian Homes Commission, they refused, were arrested and then convicted in the Hawaii state courts for trespassing. Their dwelling was destroyed. Grace and Field argued that they had title to the occupied property based on their status as citizens of the independent Nation of Hawaii. The federal courts, to whom the Graces had turned arguing a denial of due process, refused to acknowledge their property claim. For a full accounting of the case see Grace v. Drake, 832, F. Supp. 1399 (D. Haw. 1991), aff'd, 1993 U.S. App. LEXIS 24968 (9th Cir. 1993).

17. Treaty of Friendship, Commerce, and Navigation,

Dec. 20, 1849, U.S.-Haw., 103 Consol. T.S. 391. "The cession of the Hawaiian Islands to the United States having been accepted by the resolution approved by the President, July 7, 1898 (30 Stat. 75), the treaties with that country terminated upon the formation of the government for the Islands." WILLIAM MALLOY, TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS AND AGREEMENTS BETWEEN THE UNITED STATES OF AMERICA AND OTHER POWERS 1776-1909 908 (1910).

18. Military & Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 4 (June 27).

19. Overthrow of Hawaii Resolution , Pub. L. No. 103-150, 1993 U.S.C.C.A.N. 1 (107 Stat.) 1510.

20. See Alon. Ben-Meir, An Intelligent Middle Ground on Which to Build Peace, CHI. TRIB., Aug. 26, 1987, at 17.

21. Overthrow of Hawaii Resolution , Pub. L. No. 103-150, 1993 U.S.C.C.A.N. 1 (107 Stat.) 1510.

22. See generally Markus B. Heyder, Note, The International Law Commission's Draft Article on State Responsibility: Draft Article 19 and Native American Self-Determination, 32 COLUM. J. TRANSNAT'L. L. 155 (1994); Susan Lope, Note, Indian Giver: The Illusion of Effective Legal Redress for Native American Land Claims, 23 Sw. U. L. REV. 331 (1994).

23. Lope, supra note 22, at 333-34. "Discovery ... initiated the inevitable erosion of the Native American nations." Id.

24. See generally Heyder, supra note 22.

25. See William J. Murphy, Jurisdiction - Sovereign Immunity - Business Owned by Native American Nation Granted Sovereign Immunity from Suit Arising From Its Private Off-Reservation Transaction, In Re Greene, 980 F.2d 590 (9th Cir. 1992), cert denied, 114 S. Ct. 681 (1994), 17 SUFFOLK TRANSNAT'L. L.J. 599, 601 n.16 (1994) (listing cases in which Congress' power to regulate Native Americans was upheld).

26. Overthrow of Hawaii Resolution , Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

27. "In the context of Native American efforts to regain self-determination, the combination of adverse judicial doctrines and the professed plenary power of Congress over Native Americans frustrates any move toward genuine self-determination by Native American peoples." Heyder, supra note 22, at 155.

29. Contra American Insurance Co. v. Peters 26 U.S. (1 Pet.) 511 where justice marshall, in an 1828 decision involving the rights of the inhabitants of Florida following the cession of that state from Spain to the United States, states "[t[he usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be

determined at the treaty of peace." Id. at 542.

30. U.S. CONT. art. VI, cl.2.

31. The next section of the law is on the Congregational Church. It is an attempt at reconciliation and does not need further elaboration.

32. Id.

33. See Nuclear Tests Case (Austl. v. Fr.) 1974 I.C.J. 252 (Dec. 20), where the International Court held that: It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it would become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding. Id. at 267. (holding France bound to statements made by government ministers). But see Personnel Management v. Richmond, 496 U.S. 414 (1990) ("The United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.").

34. Overthrow of Hawaii Resolution , Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

35. Case concerning the Factory at Chorzow, 1928 P.C.I.J. (ser. A.) No. 17, at 47 (Sept. 13). But see J. Patrick Kelly, The Changing Process of International law and the Role of the World Court, 11 MICH. J. INT'L. L. 129, 159 (Fall 1989) ("actual practice indicates that compensation is now governed by the doctrine of unjust enrichment rather than a right of restitution").

36. "Whereas, on the afternoon of January 17, 1883, a Committee of Safety that represented the American and European sugar planters, descendants of missionaries, and financiers disposed the Hawaiian monarchy and proclaimed the establishment of a provisional government." Overthrow of Hawaii Resolution , Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

37. "Whereas, the United states minister thereupon extended diplomatic recognition to the Provisional government that was formed by the conspirators without the consent of The native Hawaiian people to the lawful government with Hawaii and in violation of treaties between the two nations and of international law." Overthrow of Hawaii Resolution , Pub. L. No. 103-150, 1993 U.S.C.C.A.N. 1 (107 Stat.) 1510.

38. See J. Timothy McGuire, International Law and

the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip, 8 EMORY INT'L. L. REV. 383 (1994).

39. See David I. Schulman, The Israeli-PLO Accord on the Declaration of Principles on Interim Self-Government Arrangements: The First Step Toward Palestinian Self-Determination, 7 EMORY INT'L. L. REV. 793 (Fall 1993); Gumar Halley, Issues Confronting the Return of Palestinian Arab Refugees After the 1993 Declaration of Principles on Interim Self-Government Arrangements, 8 GEO. IMMIGRI. L.J. 149 (1994).

40. Declaration of Principles on Interim Self-government Arrangements, Sept. 13, 1993, Isr.-P.L.O., art. VI 32 I.L.M. 1524, 1527. The author served as Legal Advisor to the Palestinian Delegation to the Middle East Peace Negotiations from 1991 to 1993.

41. Overthrow of Hawaii Resolution , Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

42. See Case Concerning Application of the Convention on the Prevention and Punishment of The Crime of Genocide (Bosnia & Herzogovina v. Yugoslavia), 1993 I.C.J. 325 (Sept. 13). The author served as Bosnia's Agent before the Court.

43. See Alan C. Laifer, Note, Never Again? The 'Concentration Camps' in Bosnia-Herzogovina: A Legal Analysis of Human Rights Abuses, 2 NEW EUR. L. REV. 159, 187 (Spring 1994). The author served as Legal Advisor to President Izetbegovic and the Members of the Bosnia Presidency during these negotiations during the summer of 1993 in Geneva.

44. "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations." Vienna Convention of the Law of Treaties, supra note 12, at art. 52.

45. Overthrow of Hawaii Resolution , Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

46. "Honolulu advertiser publisher Thurston Twigg Smith, whose grandfather was one of the leaders of the overthrow, defended its legality in an editorial prepared for Sunday's edition." Lou Cannon, Waving (and Lowering) Flag in Hawaii Pride. WASH. POST, Jan. 17, 1993, at A33.

47. Overthrow of Hawaii Resolution , Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

48. Id. ("Presidentially established investigation conducted by Congressman James Blount into the events surrounding the insurrection and overthrow").

49. See Mark A. Inciong, Note, The Lost Trust: Native Hawaiian Beneficiaries Under the Hawaiian Homes commission Act, 8 ARIZ. J. INT'L & COMP. L. 174, 191 n.34 (1991) ("The Blount Report ... found that the overthrow ... had been

illegal ... and that Liliuokalani [should] be restored to power").

50. "Whereas, in a message to Congress on December 18, 1993, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators." Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1511.

51. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1511.

52. U.N. CHARTER, art. 1, § 2.

53. Newlands Resolution, Pub. L. No. 55, 30 Stat. 750 (1898).

54. "[I]t was held that, by 1939, the rules on belligerent occupation [that it does not transfer sovereignty] had 'been recognized by all civilized nations and were regarded as being declaratory of the law and customs of war.'" GEORGE SHWARZENBERGER, 2 INTERNATIONAL LAW 165 (1965) (citing Nuremburg Judgment, International Military Tribunal, Cmd. 6964 at 65 (1946)).

55. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

56. Id. at 1512

57. Mililani B. Trask, Historical and Contemporary Hawaiian Self-Determination: A Native Hawaiian Perspective, 8 ARIZ. J. INT'L COMP. L. 77, 91-95 (1991).

58. "[A]nnexation of occupied territory is a violation of international law...Title to the territory in question must not change until there is either complete subjugation (debellatio) or a peace treaty has been put into effect." GERHARD VON GLAHN, LAW AMONG NATIONS 768 (1992).

59. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512.

60. Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948)

61. Id. at art. 25.

62. Id. at art. 18.

63. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512.

64. "Belligerent occupation does not transfer sovereignty. Instead it transfers to the occupant the authority to exercise some rights of sovereignty." VON GLAHN, supra note 58, at 774. See also SHWARZENBERGER, supra not 54, at 163-78.

65. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512.

66. See Martin Hession, The Legal Framework of European Community in International Environment Agreements, 2 NEW EUR. L. REV. 59, 103 (Spring 1994).

67. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512.

68. U.N. CHARTER art. 73.

69. U.N. CHARTER art. 1, ¶ 2.

70. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512

71. Convention on the Prevention and Punishment of the Crime of Genocide, Jan. 12, 1951, 78 U.N.T.S. 277.

72. Genocide Convention Implementations Act of 1987, Pub. L. No. 100-106, 102 Stat.3045 (1987)

73. See Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzogovina v. Yugoslavia), 1993 I.C.J. 325 (Sept. 13).

74. Status of the U.N. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 33 I.L.M. 1394 (1994).

75. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1513.

76. Id.

77. Case Concerning the Factory at Chorzow, 1928 P.C.I.J. (ser.A) No. 17, at 1 Sept. 13).

78. Id.

79. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1513.

80. Id.

81. Id.

82. Id.

83. Id.

84. U.N. CHARTER art. 1, ¶ 2.

85. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1513.

86. Id.

87. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16 at 49, U.N. Doc. A/6316 (1966).

88. United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, U.N. Doc. a/CONF.62/122, reprinted in 21 I.L.M. 1261 (1982).

89. Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. Doc. A/810, at 71 (1948), reprinted in 2 DUSAN J. DJONOVICH, UNITED NATIONS RESOLUTIONS (1973).

90. RACIAL DETERMINATION ND THE FEAR OF MISCEGENATION (John d. Smith ed., 1993).

91. See Stephen Kenyer, Soviet Turmoil: Issue of Citizenship For Ethnic Russians is Dwindling Latvians, N.Y. TIMES, Sept. 7, 1991, at A1 ("The Lithuanian...authorities are preparing to offer citizenship to all residents who want it").

92. Overthrow of Hawaii Resolutions, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

93. The author served as the legal advisor to the

Palestine Liberation Organization on the creation of the Palestinian State from 1987 to 1989.

94. M.K. GANDHI, NON-VIOLENT RESISTANCE (SATYAGRAHA), (Schocken ed., 1971) (1951).

95. Joy Aschenback, Aloha to a New Nation?, SACRAMENTO BEE, Feb. 12, 1995, at F01. The results from the December balloting will be announced on January 17, 1996, on the 103d anniversary of the overthrow of the Kingdom of Hawaii by American businessmen and sugar planters. The ballot issued by the Hawaiian Sovereignty Advisory Commission, may be voted on by any adult of Hawaiian origin, even if not currently residing in Hawaii and even if incarcerated. Rick Carroll, Hawaiian Native Want to Say 'Aloha' to U.S.: But Reliance on Tourism Makes Return to Old Ways Impossible, WASH. TIMES< Dec. 23, 1994, at A6. Cf. HAW. REV. STAT. §10-2 (1994), defining "Hawaiian" as "any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii." Sec. 10-2 defines "Native Hawaiians" as:

> "any descendant of not less than one-half part of the races inhibiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii."

See also Hoohuyll v. Ariyoshi, 631 F. Supp. 1153 (D. Haw. 1986) (Office of Hawaiian Aff airs definition of "Hawaiian" to include all persons who are descendants of aboriginal Hawaiians is constitutional as it has a rational basis and reasonably furthers legitimate legislative purpose) (cited in Trustees of Hawaiian Affairs v. Yamasaki, 737 P.2d 446 (Haw. 1987)).

96. Id. (quoting Nation of Hawaii leaders). But see John Hughes, Career Options for 50th State, CHRISTIAN SCI. MONITOR, May 5, 1994, at 18 ("No serious observer believes that the sovereignty debate will result in the session of Hawaii, or even part of it, from the United States...[H]ow would a sovereign nation support itself economically? But substantial support exists for some kind of compensation for the overthrow of the monarch.").

97. The Nation of Hawaii declared its independence from the United States on January 16, 1994. Hawaii's Search for Sovereignty, CHRISTIAN SCI. MONITOR, Oct. 17, 1994, at 9. The Proclamation of Independence is reproduced here as an appendix. See infra app.

98. See Aschenback, supra note 95; Christopher Merrill, A Little Justice in Hawaii: Kahoolawe Lives!, THE NATION, Sept. 5, 1994, at 235.

99. Hawaii v. French, 883 P.2d 644 (Haw.Ct. App. 1994); Hawaii v. Lorenzo, 883 P.2d 641 (Haw. Ct. App. 1994). The Lorenzo court cited 1993 Haw. Sess. Laws 1009, 1010, Act 359, § 1, which recognized that following the overthrow, "the indigenous people of Hawaii were denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands, and their ocean resources." The court further noted that the stated purpose of Act 359 is to "facilitate the efforts of native Hawaiians to be governed by an indigenous sovereign nation of their own choosing." Lorenzo, 883 P.2d at 643 (citing 1993 Haw. Sess. Laws 1009, 1010, Act 359, § 1). Notwithstanding the court's recitation of the Act, it concluded that "while the legislature has tacitly recognized the illegal overthrow, Act 359 indicates that the State of Hawaii does not recognize that the Kingdom exists at the present time. Id. The court left that burden to the defendant, and held that he had not presented any factual basis for concluding that the Kingdom exists. Id. at 643-44.

APPENDIX IV

The Vancouver Sun newspaper
Saturday, September 13, 1997, Final

"A MONARCHY IN LIMBO : HAWAII'S ROYALTY, OVERTHROWN ILLEGALLY, MAY TRY FOR A COMEBACK"

by Ian Mulgrew

Don Ho may have to stop calling himself the "King of Hawaii" because there soon could be a real one. Three years ago, U.S. President Bill Clinton signed the so-called "apology law," a joint congressional resolution formally apologizing to native Hawaiians for the illegal overthrow of their Kingdom at the end of the last century.

The Republic of Hawai'i with Sanford B. Dole as president was proclaimed on July 4, 1894. It was recognized immediately by the U.S. government and later annexed through a joint resolution of the U. S. Congress in 1898 during the presidency of William McKinley. "The Kingdom was never lawfully terminated, therefore the Kingdom still exists or should be restored," international law specialist Francis Anthony Boyle, of the University of Illinois, said in a telephone interview. "Precisely who is the monarch, that's another issue - I don't know. There are descendants of the last monarch and some of them have made personal claims to be the legitimate monarch, but I'm not in a position to evaluate their claims one way or another." The issue here, Boyle emphasized, is the U.S. Congress has admitted they illegally overthrew the Kingdom in violation of at least three different treaties the U.S. was party to at the time.

In the event Native Hawaiians declare independence, which they now have a right to do under international law, Boyle said they could restore their monarchy, although that could prove tricky.

Lydia Lili'uokalani, the last sovereign Queen of Hawai'i, died in 1917. But she maintained throughout her life that Hawaiian sovereignty is inherent and cannot be taken away by force.

Lili`uokalani evoked loyalty and sympathy from all Native Hawaiians, but she died childless and the royal line now is a tangle. Today, some in Hawaii want to go back to the monarchy, others don't. `"The critical point is the distinction between a state and a government,'" Boyle said. `"Their argument about the state, the Kingdom of Hawaii, is correct it was never validly terminated by the U.S. government. But assuming they regain their independence, what kind of government they want is for them to decide."

Estimates of the number of native Hawaiians in the state's population of just over one-million vary from just 12 per cent to 20 per cent of the total. Dennis Kanahele is head of the "Nation of Hawaii," the self-proclaimed independent government.

Once an advocate of confrontation with the authorities, Kanahele says he now believes in the power of persuasion: "We just have to have patience, and we have to educate each other, and we have to be concerned about the non-Hawaiians as well as our own people as we develop this process.'" But time may be running out.

Of the number of people who choose to identify themselves as native Hawaiian, only six-thousand or so are pure-blooded. One scientist has projected that the Hawaiians as a distinct people will disappear by the year 2040.

APPENDIX V

PROCLAMATION

COMES NOW, David Keanu Sai, a native Hawaiian subject, in his public capacity as Regent of the Hawaiian Kingdom, lawfully appointed in accordance with Article 33 of the Constitution of 1864, since the 1st day of March, A.D. 1996, of record as document no. 96-035316 in the Bureau of Conveyances, and being the successor of the Hawaiian Kingdom Trust Company, of record as document no. 96-067865 in the said Bureau, it is in this capacity that I hereby establish the following statements of facts.

1st. The Hawaiian Kingdom was governed until 1838, without legal enactments, and was based upon a system of common law, which consisted partly of the ancient kapu, and the practices of the celebrated chiefs, that had been passed down by tradition. The Bill of Rights, proposed and signed by His Majesty Kamehameha III on the 7th day of June, 1839, was the first essential departure from the ancient ways. That Act had recognized three classes of persons as having vested rights in the lands; 1st the Government, 2nd, the Konhiki, and 3rd, the Native Tenants, and declared protection of life, liberty and property of both the Konhiki (Landlord) class and the Native Tenant class.

2nd. On October 8th, 1840, His Majesty voluntarily divested himself of his absolute powers and attributes by promulgating a constitution, which recognized the three grand divisions of a civilized monarchy; the King as the Chief Executive, the Legislature, and the Judiciary. The constitution generally defined the duties of each branch of government. Civilly, the laws embraced the usual rights and duties of the social relations between the three classes of people, and initiated the internal development of the country with the promotion of industry and commerce. In these laws the fundamental basis of landed tenure

was declared, and cultivation of the soil, under a feudal tenancy not much differing that of ancient Europe, was encouraged by relaxing the vassal service of the Chiefly and Tenant classes.

3rd. On the 24th of June, 1845, a Joint Resolution was enacted by the Legislature and signed into law, calling upon the Attorney General, to draw up a complete set of the existing laws, embracing the organic forms of the different departments, particularly the executive and judicial branches, with an outline of their duties and modes of procedure. This had brought forth the First Act of Kamehameha III to Organize the Executive Ministries, the Second Act of Kamehameha III to Organize the Executive Departments, and the Third Act of Kamehameha III to Organize the Judiciary Department. These Acts came to be known as the Organic Acts of 1845-46.

4th. On the 27th of September, 1847, the Legislature passed a law calling upon William L. Lee, Chief Justice, to establish a criminal code. In the year 1850, a Penal Code was submitted to the Legislature by the Chief Justice and passed into law, which had adopted the principles of the English common law. Eighteen years later, in 1865, the Judges of the Supreme Court were directed by an act of the Legislature, on the 22nd of June, to compile and ready to publish, the Penal Laws of the Kingdom. The matter required a compilation of the amendments and additions made to the Penal Code since 1850, and in the year 1869, a revised Penal Code was published.

5th. On December 20th, 1849 a treaty of friendship, commerce, and navigation, between the United States of America and His Majesty the King of the Hawaiian Islands, was concluded and signed at Washington. Ratifications were exchanged at Honolulu on August 24th, 1850, and the treaty was in force from that date, for the term of ten years, and further until either of the contracting parties shall give notice to the other of its intention to terminate. Any citizen or subject of

either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.

6th. Since the passage of the Organic Acts of 1845-46, a Joint Resolution was passed by the Legislature and signed into law in the year 1856, that called upon Prince Lot Kamehameha, Chief Justice William L. Lee and Associate Justice George M. Robertson to form a committee to prepare a complete Civil Code, and to report the same for the sanction of the Legislature in 1858. Pursuant to the resolution, a Civil Code was finally passed by both Houses of the Legislature on the 2nd of May, 1859, and signed into law on the 17th of May. Session laws subsequently enacted by the Legislature amended or added to the Civil Code.

7th. In 1880 the Legislature passed an Act to provide for the codification and revision of the laws of the Kingdom. The Justices of the Supreme Court determined that this Act imported a compilation of the existing laws of the Kingdom and not codification of the same, which required the consideration of the next Legislature. With this in mind, three commissioners were appointed on the 14th of May, 1881, and a Compiled Laws of the Hawaiian Kingdom was published in 1884.

8th. On October 16th, 1886, the Hawaiian Legislature was prorogued by King David Kalākaua after it met in Legislative session for 129 days. Thereafter a new constitution was forced upon the King on the 7th of July, 1887, without the consent or ratification of the Legislature, and consequently a new legislature was elected while the former remained out of session. In the Blount Report, Chief Justice Judd called the extortion of the 1887 constitution a *revolutionary* act and referred to it as a bad precedent. This new legislature cannot be considered as being lawful and competent, and any laws passed by the same are

void and without merit.

9th. Counter-revolutions rose as a direct result of the forced constitution, which later culminated in the governmental takeover of January 17th, 1893, by the same individuals who extorted the constitution of 1887, who called themselves the committee of safety. Queen Lili'uokalani, along with her cabinet, were *forcibly* removed from office on this date, and replaced by an executive council comprising of Sanford B. Dole former Associate Justice of the Supreme Court, as *President,* J.A. King, as *Minister of Interior,* P.C. Jones, as *Minister of Finance,* W.O. Smith, as *Attorney General,* and an advisory council comprising of fourteen individuals. Officers and employees of the government continued in their respective offices except for the Queen and her cabinet. The government was styled as a provisional government that would remain in existence until union with the United States was negotiated and agreed upon. These individuals remain subject to criminal indictments for the crime of treason under chapter VI, section 1 of the Hawaiian Penal Code.

10th. Unable to form a union with the United States under the guise of a provisional government, these individuals and their supporters transformed themselves into the Republic of Hawai'i on July 3rd, 1894 and maintained their opposition to the Hawaiian Kingdom and its laws. Four years later on July 7th, 1898, the United States Congress passed a Joint Resolution annexing the Republic of Hawai'i, *and not the Hawaiian Kingdom,* whereby the Republic would "...cede absolutely and without reserve to the United States all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands..." The Republic of Hawai'i's sovereignty of "whatsoever kind" included nothing, due entirely to its means of attainment which stood in direct contravention with the existing Hawaiian law, which stands as the sovereignty of the Hawaiian Islands. It was by this Act that the United States entered into the

venue of the Hawaiian Kingdom, in contravention of article 1, Treaty of 1850.

11th. Nevertheless, on April 30th, 1900, the United States passed an Act to provide a government for the territory of Hawai'i, which transformed the government of the Republic of Hawai'i into a Territory of the United States. Section 1 of that Act specifically states, to wit: "That the phrase 'laws of Hawai'i, as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawai'i, in force on the 12th day of August, 1898, at the time of the transfer of sovereignty of the Hawaiian Islands to the United States of America." Furthermore section 83, chapter IV, states to wit: "That the laws of Hawai'i (constitution and laws of the Republic of Hawai'i) relative to the judicial department, including civil and criminal procedure, except as amended by this Act, are continued in force, subject to modification by Congress, or the legislature." By this Act the Territory of Hawai'i is merely a transformation of the Republic of Hawai'i, and the Republic was merely a transformation of the provisional government that was established by individuals who committed the crime of treason, as defined in section 1, chapter VI, Hawaiian Penal Code.

12th. On March 18th, 1959, the United States Congress passed an Act to provide for the admission of the State of Hawai'i and once again transformed the government. Section 5(a) of that Act stated, to wit: "That the State of Hawai'i and its political subdivisions, shall succeed to the title of the Territory of Hawai'i and its subdivisions in those lands and other properties in which the Territory and its subdivisions now hold title." In addition section 5(g) states to wit: "...the term 'lands and other properties' ...means and is limited to, the lands and properties that were ceded to the United States by the Republic of Hawai'i under the joint resolution of annexation..." The State of Hawai'i is the successor of

the provisional government.

13th. On February 3rd, 1996, at a meeting of the Hawaiian Kingdom Trust Company, a general partnership formed under and by virtue of an "Act to Provide for the Registration of Co-partnership firms," p. 648, Compiled Laws of 1884, having in view the proper authority required and allowed by deeds of trust namely document no. 96-000664, no. 96-004246, no. 96-006277, no. 96-014115 and no. 96-014116, all being duly registered in the said Bureau, it had become necessary to the prosperity of the Hawaiian Kingdom and the proper physical, mental and moral improvement of the beneficiaries of the aforesaid trust, and who retain a *vested* undivided right in and to all the lands of the Hawaiian Islands as native Hawaiian subjects, that the necessary steps be taken for the quieting of all land titles in these islands.

14th. Perfect Title Company, a general partnership established under and by virtue of the same legislative act aforesaid, and whose deed of general partnership is of record as document no 95-153346 in the said Bureau, had been appointed by the Trustees of the Hawaiian Kingdom Trust Company to investigate and confirm or reject all claims of fee-simple titles arising after the 10th day of December A.D. 1845, in accordance with Hawaiian law.

15th. On February 6th, 1996, a covenant of agreement was entered between the Hawaiian Kingdom Trust company, aforesaid, and Perfect Title Company, aforesaid, binding themselves and their heirs, executors and administrators and assigns to the true and faithful performance of the quiet title action, of record as document no. 96-016046 in the said Bureau.

16th. In the February 19th, 1996 issue of the Pacific Business News and the March 1996 issue of the Ka Wai Ola o Oha newspaper the public was notified that Perfect Title Company, aforesaid, had been appointed by the Trustees of the Hawaiian Kingdom Trust Company to investigate and confirm

or reject all claims of fee-simple titles arising after the 10th day of December, A.D. 1845, in accordance with Hawaiian law. All persons claiming to possess a fee simple title are required to file with Perfect Title Company by depositing specifications of their claims, and to adduce the evidence upon which they claim title to any land in the Hawaiian Islands, before the expiration of two years from the 14th day of February, A.D. 1996; or in default of so doing, they will after that time be forever barred of all right to recover the same in the courts of justice.

17th. In the absence of the Government class and the Konohiki (Landlord) class, aforesaid, the Trustees of the Hawaiian Kingdom Trust Company, deriving its authority by certain deeds of trust of the native Tenant class, namely documents no. 96-019923, no. 96-006277, no. 96-024845, no. 96-000664, no. 96-026388, no. 96-014116, no. 96-014115 and no. 96-004246 and no. 96-028714, on the 1st day of March, 1996, had appointed myself, David Keanu Sai, to the Office of Regent, entrusted with the vicarious administration of the Hawaiian government during the absence of a Monarch, and that I shall hold office until such time as the Legislative body shall hereafter convene to confirm or amend this appointment. Notice of this appointment, aforesaid, was duly registered in the said Bureau.

18th. On the same day of the aforesaid recorded notice of appointment, a subsequent notice of proclamation from the Office of the Regent, of record as document no. 96-035328 in the said Bureau, confirmed the Quiet Title Action, aforesaid, and proclaims that where the Hawaiian Kingdom Trust Company would issue patents in fee-simple or enter into lease agreements for individuals who qualify for the same, that it shall now be done by the Office of Regent, or in such person as will be lawfully delegated by the same, and that upon completion of all investigative reports, the Hawaiian Kingdom Trust Company shall enter in

the Bureau of Conveyances a notice of determination for public record. By this confirmatory proclamation of the Quiet Title Action by the public Office of Regent, the Bureau of Conveyances had been reopened for the lawful registration of the Notices of Investigations upon a Claim to Fee-simple and the subsequent grants of freehold estates and leases issued upon the same, which said Bureau had been incapable of lawfully registering document since the 17th day of January, 1893, whereupon the Chief Executive of the Hawaiian Kingdom, being Queen Lili'uokalani along with her cabinet, were forcibly removed form office, thereby affecting the authority and competency of registering conveyances in accordance with the chapter XXVI of the Compiled Laws of 1884.

19th. On the 30th of June, A.D. 1996, the Hawaiian Kingdom Trust Company aforesaid, was dissolved in accordance with the provisions of its deed of general partnership, of record as document no. 96-067865 in the said Bureau. The said partnership would remain in existence until the absentee government is re-established, whereupon all record and monies of the same will be transferred and conveyed over to the office of the Minister of Interior. In light of the appointment of the Regent on the 1st day of March, 1996, and the Regent's authority to appoint the Minister of Interior under section 30, chapter VI, title II, p. 8, Compiled Laws of 1884, the Hawaiian Kingdom Trust Company, by its Trustees, did remise, release and forever quitclaim unto myself as appointed Regent of the Hawaiian Kingdom, all of its right, title and interest acquired by certain deeds of trust under the exclusive authority and jurisdiction of the Hawaiian Kingdom.

Now, therefore, I, David Keanu Sai, by the authority in me vested as Regent of the Hawaiian Kingdom and in conformity with the Constitution and laws, do hereby proclaim as follows:

1. The Hawaiian Monarchial system of

Government is hereby re-established.

2. The Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code are in full force. All Hawaiian Laws and Constitutional principles not consistent herewith are void and without effect.

3. The laws are obligatory upon all persons, whether subjects of this Kingdom, or citizens or subjects of any foreign State, while within the limits of this Kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.

4. Private agreements shall have no effect to contravene any law which concerns public order or good morals. But individuals may, in all cases in which it is not expressly or impliedly prohibited, renounce what the law has established in their favor, when such renunciation does not affect the rights of others, and is not contrary to the public good.

5. Whatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed.

Done at the city of Honolulu, Island of O'ahu, this 28th day of February, A.D. 1997.

[signed] David Keanu Sai,
Regent of the Hawaiian
Kingdom

APPENDIX VI

Office of the Regent
Kingdom of Hawai'i

November 17, 1997

The Honorable William J. Clinton,
President of the United States of America
1600 Pennsylvania Avenue, Northwest
Washington, D.C. 20500-0005

Re: Notification of filing Petition for Extraordinary Writ on behalf of the Hawaiian Kingdom

The Honorable William J. Clinton,

Being very desirous to inform you that the Hawaiian Kingdom, by its Ambassador, will be filing a petition for a writ of mandamus in the Supreme Court of the United States of America. The petition is brought forth pursuant to the rules set forth by this court under Title 28 U.S.C. §1651, and the court having original jurisdiction of all suits brought by ambassadors, or other public ministers.

In view of the instrument which joins proudly our two nations, that is to say the Treaty of Friendship, Commerce and Navigation, signed on December 20, 1849, and ratifications having been exchanged on August 24, 1850, I have taken the liberty of bringing forth the authority by which I claim Regent of the Hawaiian Kingdom and the conditions of my appointment, and how I file this petition for a writ of mandamus in my official capacity.

On December 15, 1995, the Hawaiian Kingdom Trust Company, a Hawaiian Kingdom general partnership existing under and by virtue of an "Act to Provide for the Registration of Co-partnership Firms," chapter XXVIII, Hawaiian Civil Code, p.

648, Compiled Laws, 1884, was established as a trust to serve in the absence of the Hawaiian Kingdom government and had adopted the Hawaiian Constitution of 1864 and the laws lawfully established in the administration of the same.

Thereafter, native Hawaiian subjects conveyed by deeds of trust all of their "vested" undivided right, title and interest in and to all the lands of the Hawaiian Islands, as native Hawaiian subjects, to the Hawaiian Kingdom Trust Company, to carry out the duties for and on behalf of the Hawaiian Kingdom government in such manner as Hawaiian law prescribes for and in the best interest of the grantors/beneficiaries. The vested rights of native Hawaiian subjects in and to all the lands of the Hawaiian Islands are secured to the same by the Constitution and laws of the Hawaiian Kingdom.

In the absence of the Government class and the Chiefly (Landlord) class in these islands, the Trustees of the Hawaiian Kingdom Trust Company, deriving its authority by certain deeds of trust had appointed myself, to the public office of Regent on March 1, 1996, entrusted with the vicarious administration of the Hawaiian Government during the absence of a Monarch, and that I shall hold office until such time as the Legislative body shall hereafter convene to confirm or amend this appointment in accordance with the laws of the Hawaiian Kingdom.

On June 30, 1996, the Hawaiian Kingdom Trust Company, was dissolved in accordance with the provisions of its deed of general partnership.

Under the articles of agreement of the Hawaiian Kingdom Trust Company, the said partnership would remain in existence until the absentee Government had been re-established, whereupon all records and monies of the same would be transferred and conveyed over to the office of the Minister of Interior. In light of the appointment of the Regent on March 1, 1996, as chief executive of the Government under article 21 of the

Constitution of 1864, and the Regent's authority to appoint the Minister of Interior under §30, chapter VI, title II, Hawaiian Civil Code, the Hawaiian Kingdom Trust Company, by its Trustees, did remise, release and forever quitclaim unto myself as appointed Regent of the Hawaiian Kingdom, all of its right, title and interest acquired by certain deeds of trust under the exclusive authority and jurisdiction of the Hawaiian Kingdom. That you receive this letter as my accreditation that I come as an authorized ambassador of my nation, and accord me the proper credit due my rank and authority.

I believe that if this petition be fully carried out in the liberal spirit in which it is intended, if the laws of my country, in all manners, be unlocked and rightfully placed, it will open the hidden fountains of prosperity, and prove the dawn of a new and bright era between our two nations.

That our nations' subjects and citizens may realize the glad promises of what this petition portends and long live to enjoy the benefits is my sincerest prayer.

With sentiments of the highest regard,

[signed] David Keanu Sai,
Appointed Regent of
the Hawaiian Kingdom
and Ambassador to the
United States of America

cc: Solicitor General
enclosure: Treaty of 1850 with the Hawaiian Kingdom